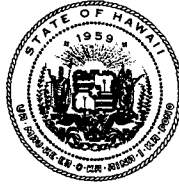


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

MARIE C. LADERA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

(808) 587-1510 (Telephone)
(808) 587-1560 (Fax)

Late Testimony

HOUSE COMMITTEE ON TOURISM & CULTURE HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

TESTIMONY ON S.C.R. NO. 42, S.D. 1 REQUESTING THE DEPARTMENT OF TAXATION TO ENFORCE THE COLLECTION OF THE TRANSIENT ACCOMMODATIONS TAX ON UNREGISTERED VACATION RENTALS, AND REQUESTING THE COUNTIES TO ENFORCE THE ZONING LAWS AGAINST ILLEGAL OPERATIONS OF VACATION RENTALS

April 22, 2005

This resolution requests that the Department of Taxation (Department) enforce the collection of the transient accommodations tax (TAT) on bed and breakfast operations and on transient residential vacation rentals, especially those that advertise over the internet. This resolution further requests that the counties enforce their respective zoning laws and regulations on bed and breakfast operations and on transient residential vacation rentals, especially those that advertise over the internet. The Department and the counties are further requested to report to the Legislature on the progress and results of their enforcement efforts by no later than twenty days prior to the convening of the Regular Session of 2006.¹

The Department supports the intent of this resolution and notes that it is currently seeking unpaid TAT and general excise tax (GET) due from the operation of bed and breakfast operations and of transient residential vacation rentals. The Department's enforcement activities in this regard is focused primarily on bed and breakfast operations and transient residential vacation rentals that advertise on the internet and that have not paid the TAT and GET owed to the State.

The Department offers the following comments and concerns regarding this bill:

- TAT collections have increased year over year for fiscal years ending 2004 and 2003. For fiscal year 2004, collections of TAT increased 6.4%, and collections increased by 8.4% for fiscal year 2003.
- The Department has been working in cooperation with the Hawaii Tourism Authority (HTA) to identify all bed and breakfast operations and all transient residential vacation rentals that current operate in the State and that currently advertise on the internet and to list all of these entities on spread sheets. The Department next plans to work in conjunction with the HTA to identify the owners of these entities. Once these owners are

¹ This S.D. 1 merely clarifies the clause beginning on line 20 to state that many bed and breakfast operations are unlicensed, unregistered, and operate illegally.

identified, the Department can review past tax returns of the owners to determine if TAT and GET has been paid in previous years.

- The Department is concerned that imposing additional reporting requirements as this resolution and other resolutions and bills propose to do will severely impact the Department's ability to meet increased revenue collection targets and otherwise adversely affect the Department's core functioning.
- State law currently prohibits the Department from sharing confidential tax return information with the counties' directors of finance. S.B. No. 1685, S.D. 2, H.D. 1 would expressly permit the Department to share tax return information. However, in order to facilitate the sharing of tax return information by the Department with the counties, current State law must also be revised to prohibit county officials from disclosing confidential tax return information provided to them by the Department to third parties.
- In order for the Department to work effectively with county officials on TAT and GET collections from bed and breakfast operations and transient residential vacation rentals, State law must be changed to provide for the reciprocal sharing of tax information from the counties to the Department. (E.g., S.B. No. 1685, S.D. 2, H.D. 1 must be revised to provide that, notwithstanding any law (including ordinances) to the contrary, the counties' directors of finance may share confidential tax return with the Department.

Respectfully submitted,

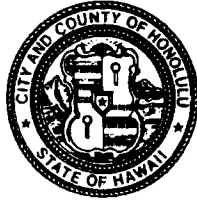
A handwritten signature in black ink, appearing to read 'Kurt Kawafuchi', written over the typed name.

KURT KAWAFUCHI
Director of Taxation

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 523-4432 • FAX: (808) 527-6743
DEPT. WEB SITE: www.honoluluodpp.org • CITY WEB SITE: www.honolulu.gov

MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
DIRECTOR

DAVID K. TANQUE
DEPUTY DIRECTOR

April 22, 2005

The Honorable Jerry L. Chang, Chair
and Members
Committee on Tourism and Culture
and
The Honorable Ezra Kanoho, Chair
and Members
Committee on Water, Land, & Ocean Resources
The House of Representatives of the State of Hawaii
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Chang and Kanoho:

SENATE CONCURRENT RESOLUTION 42
Collecting Transient Accommodation Tax on Unregistered Rentals
Requesting the Counties to Enforce Against Illegal Rentals

Although we agree in principle with the proposals of this resolution, without additional resources, we are already doing the best we can do.

Regarding the identification of illegal rentals, the Land Use Ordinance is very specific. Short-term rentals (less than 30 days) are only permitted in Resort zoning. For all other zoning, the use is not permitted, unless the operator has been granted approval in the form of a Nonconforming Use Certificate. As such, the definition of what constitutes an illegal vacation rental is simple. The difficult task is verifying that the clandestine use is ongoing, which is only exacerbated by the lack of sufficient resources.

The Honorable Jerry L. Chang, Chair
and Members
Committee on Tourism and Culture
and
The Honorable Ezra Kanoho, Chair
and Members
Committee on Water, Land, & Ocean Resources
The House of Representatives of the State of Hawaii
April 22, 2005
Page 2

Further, we feel it is worthy of mention that inconsistent legislation introduced during this session is sending mixed signals regarding enforcement. With this measures lawmakers cry for a need to tighten enforcement, while other legislative measures, such as HB393, propose to remove already proven effective enforcement tools. Please confer with your legislative counterparts to determine a clearer course of action. The legislative desires for greater enforcement need to be complemented by provisions to give the counties the resources to do the job.

For these reasons, we urge you to file this resolution.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Henry Eng", with a stylized flourish at the end.

HENRY ENG, FAICP
Director of Planning and Permitting

To: House Committee on Tourism & Culture
Representative Chang, Chair and Representative Karamatsu, Vice-Chair
House Committee on Water, Land, & Ocean Resources
Representative Kanoho, Chair and Representative Shatz, Vice-Chair

From: Testimony of Lawrence Bartley who intends to testify in person

Date/Time/Place: April 22, 2005 11:00 am Room 325

Subject: Speaking for S.C.R. NO. 42 S.D.1

Representing: Kailua Neighborhood Board #31 and the Kailua NB Permitted Interaction Group TVU-PIG, formed by the Board to implement its February 3, 2005 resolution calling for improved enforcement.

Good morning chairs and Representatives. I'm Larry Bartley and I am here representing the Kailua Neighborhood Board, where I now serve as Vice-Chair and Chair of a Permitted Interaction Group, formed recently to encourage and aid the city's enforcement efforts to deal with the rapidly expanding problem of illegal hotel-type operations in our residential neighborhoods.

The KNB urges you to adopt this 42 SD1. This resolution is timely, and very necessary, to send a warning to illegal residential hotel room operators, and would-be operators, that someone is watching and enforcement is on the way.

The KNB adopted a very clear resolution calling for enforcement – printed on the back of this page. It outlines the most obvious reasons we need to stop these activities as soon as possible.

We're not talking Bed and Breakfast like we see pictured on the Maine coastline, an old rustic house run by a little old lady struggling to make ends meet.

This is a flat hotel in Kailua making loads of money for its owners and causing extreme hardship on its neighbors.

Whether you call it a B&B or a TVR or a TVU, it has most of the elements of a hotel:

- A booking agent – Reservations are made through agencies or directly with the owner online.
- Maids – Many are serviced by maids in automobiles instead of the usual cart in the hallway.
- Room Service – Catering is now big business. Phone in your order, and food will be picked up from the restaurant of your choice and delivered to your door hot.
- Come and go as you please, any time of the day or middle of the night.
- Vacation atmosphere

The important elements of a hotel that these operations are missing include:

- 1) Lack of Security – The introduction of vacationers into sleepy, family oriented residential neighborhoods causes major problems. We've all had visitors with that "I'm on vacation" attitude. Kailua gets no additional police for the guests.

Eric H. Hoffer

Keep it Kailua !

Preserving Kaihua's Character

**Representative Jerry Chang, Chair
Committee on Tourism & Culture
State House**

**Representative Ezra Kamoho, Chair
Committee on Water, Land and Ocean Resources
State House**

Re: SCR-42, SDI

Chairmen & Members:

Keep it Kailash supports passage of SCR-42, SDI and the message it carries.

Many illegal transient accommodation units operate in Kailua, Oahu. They incur neighborhood nuisance and strain the adequacy of our infrastructure since their activities are not planned for. In addition their transient and commercial nature threatens the desired residential character of our community.

Many of them also do not pay the transient accommodation tax violating tax laws of the state as well as zoning laws of the counties. As a consequence, these activities tend to proliferate because in their case, "crime pays." For the benefit of our community's future and our reliance on a lawful society, the prohibition of such accommodations should be vigorously enforced. While they operate, they should adhere to the tax law also for the benefit of state revenue enhancement.

Sincerely,

Sincerely,

Donald A. Bremner

Donald A. Bremner
Spokesperson

Council Chair
G. Riki Hokama
Vice-Chair
Robert Carroll
Council Members
Michelle Anderson
Jo Anne Johnson
Dain P. Kane
Danny A. Mateo
Michael J. Molina
Joseph Pontanilla
Charmaine Tavares




Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII
96793
www.co.maui.hi.us/council/

April 21, 2005

TO: Honorable Jerry L. Chang, Chair
House Committee on Tourism and Culture
Honorable Ezra Kanoho, Chair
House Committee on Water, Land, and Ocean Resources

FROM: G. Riki Hokama 
Council Chair

DATE: Friday, April 22, 2005

SUBJECT: **SUPPORT OF SCR 42, S.D.1, REQUESTING THE DEPARTMENT OF TAXATION TO ENFORCE THE COLLECTION OF THE TRANSIENT ACCOMMODATIONS TAX ON UNREGISTERED VACATION RENTALS, AND REQUESTING THE COUNTIES TO ENFORCE**

Thank you for the opportunity to testify in support of the intent of this important measure. The purpose of this concurrent resolution is to request that the Department of Taxation enforce the collection of transient accommodations taxes on unregistered vacation rentals, and to further request that the counties enforce zoning laws against illegal operations of vacation rentals.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

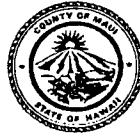
I support the intent of this measure for the following reasons:

1. Unregistered vacation rentals deny the State and counties of the transient accommodations taxes they are due. Those taxes are an important revenue source, and I support increased efforts by the Department of Taxation to collect them.
2. I also support the County of Maui's enforcement of zoning laws, which require transient vacation rentals to obtain necessary permits prior to operation. However, unless the State intends to provide funding to expedite the County's enforcement efforts, I cannot support a requirement that the counties report back to the legislature on the status of enforcement efforts.

For the foregoing reasons, I support the intent of this measure.

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Council Chair
G. Riki Hokama
Vice-Chair
Robert Carroll
Council Members
Michelle Anderson
Jo Anne Johnson
Dain P. Kane
Danny A. Mateo
Michael J. Molina
Joseph Pontanilla
Charmaine Tavares



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
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96793
www.co.maui.hi.us/council/

April 20, 2005

TO: Honorable Jerry L. Chang, Chair
Committee on Tourism & Culture

FROM: Bob Carroll
Council Member, East Maui

DATE: Friday, April 22, 2005

SUBJECT: **SCR 42, SD1, REQUESTING THE DEPARTMENT OF TAXATION TO
ENFORC THE COLLECTION OF THE TRANSIENT ACCOMMODATIONS TAX
ON UNREGISTERED VACATION RENTALS, AND REQUESTING THE
COUNTIES TO ENFORCE .**

I Support SCR 42, SD1 for the reasons cited in testimony submitted by Maui County Council Chair G. Riki Hokama, and urge you to oppose this measure.

Council Chair
G. Riki Hokama

Vice-Chair
Robert Carroll

Council Members
Michelle Anderson
Jo Anne Johnson
Dain P. Kane
Danny A. Mateo
Michael J. Molina
Joseph Pontanilla
Charmaine Tavares



Director of Council Services
Ken Fukuoka

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April 21, 2005

TO: Honorable Jerry L. Chang, Chair
House Committee on Tourism and Culture

Honorable Ezra Kanoho, Chair
House Committee on Water, Land and Ocean Resources

FROM: Michael J. Molina
Council Member

DATE: Friday, April 22, 2005

SUBJECT: **SUPPORT OF SCR 42, S.D. 1, REQUESTING THE DEPARTMENT OF
TAXATION TO ENFORCE THE COLLECTION OF THE TRANSIENT
ACCOMMODATIONS TAX ON UNREGISTERED VACATION RENTALS, AND
REQUESTING THE COUNTIES TO ENFORCE**

I support SCR 42, S.D. 1 for the reasons cited in testimony submitted by Maui County Council Chair
G. Riki Hokama, and urge you to support this measure.

TESTIMONY REGARDING S.C.R. No. 42 S.D.1

Dear Chairmen and Members of The House Committee On Tourism & Culture, and The Committee On Water, Land & Ocean Resources:

I respectfully urge you to vote YES on Senate Concurrent Resolution No.42 S.D. 1.

The present impotence and lethargy with regards to the enforcement of the present ordinances governing regulation and taxation of ILLEGAL transient accommodations, and Bed and Breakfast operations, needs attention and action.

Illegal "TVRs" and "B&B's" have dramatically changed, FOR THE WORSE, the character, safety, affordability, and density of our residential communities.

Failure to collect taxes from these operations have resulted in rapidly escalating, and prohibitive costs to honest citizens and business who are bearing the burden of infrastructure impact (ie: water-sewer, road usage, exaggerated real estate appraisals for personal property taxes, police and fire services, over crowded residential area beaches, noise issues,etc.) and NOT PAYING TAXES DUE.

Even those ILLEGAL operators that do pay taxes are putting an undue burden on residential neighborhoods, and creating unfair competition for those who are LEGALLY permitted.

"Self regulation" is NOT a solution. Those who want to operate illegally will continue to do so. Most of those proposing "self regulation" are presently ILLEGAL operators who are seeking amnesty.

Many of Hawaii's "Realtors", and Real Estate companies are compromising their code of ethics by actively participating in the present, unenforceable ordinance.

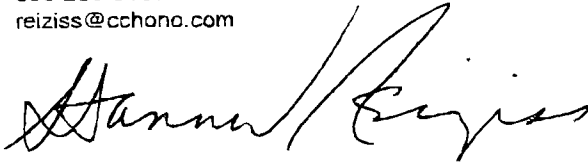
Many of Hawaii's local Chambers Of Commerce, ie: Kailua Town, actively solicit the membership of these ILLEGAL operations, and help promote them in the name of promoting local businesses EVEN IF THEY ARE ILLEGAL.

This creates an indelible STAIN on the integrity of our image conscious state, and encourages other nefarious ways of earning a living.

~~In the name of law and order, ethics, and quality of life for the overwhelming majority of Hawaiian residents,~~ please SUPPORT this resolution.

Respectfully Submitted,

Stann W. Reiziss, PhD
PO Box 1517
Kailua, Hawaii 96734
808-230-8199
reiziss@cchono.com



4/21/05

SHANNON WOOD
P.O. Box 1013
Kailua, HI 96734
808/263-6001

Committee On Tourism & Culture
Rep. Jerry Chang, Chair
Rep. Jon Riki Karamatsu, Vice Chair
&
Committee On Water, Land & Ocean Resources
Re. Ezra Kanoho, Chair
Re. Brian Schatz, Vice Chair

11 am
Friday, April 22, 2005
Conference Room 325

SCR 42 SD1
REQUESTING THE DEPARTMENT OF TAXATION TO ENFORCE
COLLECTION OF THE TRANSIENT ACCOMMODATIONS TAX AND
REQUESTING THE COUNTIES TO ENFORCE THE ZONING LAWS
AGAINST ILLEGAL OPERATIONS OF VACATION RENTALS
Support the first half
Oppose the second half

To the Chairs and Committee members:

My name is Shannon Wood, a Kailua resident. Please note that I am here today speaking as an individual rather than on behalf of any particular organization although I belong to several who recognize the need for alternative accommodations to attract the type of visitors we want to come to Hawai'i - well-educated, high income, intellectually curious about learning new things, smart shoppers, and environmentally aware.

Since 1996, I've operated a small FREE Internet-based information service called **Ka Hale Na Ho'okipa** which helps visitors find a special place to stay. Here is what the website says

For those of you who are eager to experience the *Other Hawai'i* here on O'ahu, however, there are an increasingly greater number of accommodations alternatives which will be anywhere from 20% to 80% cheaper than staying in a high-rise hotel in Waikiki or at a mega-resort on one of the *Neighbor Islands*.

We work very closely with two very reputable reservations services who will find you just the right place to stay. **NOTE:** We do not receive any payment but are doing it because we feel strongly committed to this type of tourism with its small footprint.

A word of caution, however, about the situation on O'ahu. Bed & breakfast operations are not welcome in many communities around O'ahu. There are teams of vigilantes who are going after these "illegal operations" with the idea of driving them out of business. It's not that these operators want to run an illegal business - they are forced to because the last licensing period closed on December 28, 1989.

That's not a typo - no licenses have been issued in over 16 years.

Furthermore, existing b&b licenses are not transferable - as a gift or a bequest or sale - so that current operators, most of whom are in their 60s and 70s, now number less than 60 on O`ahu. Within a decade, virtually all legal b&b's will be shut down.

Just to give you an idea of the magnitude of the problem, conservative estimates are that there are currently around 1,700 "illegal" b&b's in operation with many of them in areas like Kahala, Kailua, and the North Shore. Some people are claiming that there are more than 10,000 illegal rooms in use.

Unfortunately, there seems to be increasingly strong opposition to amending the ordinance in order to make these operations legal. I fear that, if there are to be any changes, it will not happen for at least another decade.

Therefore, if you want to stay in a b&b, be sure to ask your reservation service if the b&b is legal and licensed. If it is not and you still want to stay there, you might want to consider booking a hotel room in Waikiki just in case your first choice is shut down by the *City* in response to complaints filed by the *b&b police*. You can usually cancel without penalty with 49 hours notice.

Before I start, I want to make it clear that I am only talking about bed & breakfast operations and not **Transient Vacation Rentals** which are managed by a third party for the property owners. The two are handled very differently by the counties because they are operated differently. It bothers me no end that the two terms are used interchangeably.

First of all, I support the first half of this resolution **REQUESTING THE DEPARTMENT OF TAXATION TO ENFORCE COLLECTION OF THE TRANSIENT ACCOMMODATIONS TAX.** We all must pay for public services.

In late 1997 and again in 2000 and again in 2002 here on O`ahu, I conducted a study using standard sampling techniques to identify the problems associated with the **illegals**.

The overwhelming majority want to become legal and pay their taxes openly - and at the time I last conducted the study, over 85% of them paid both their **GET & TAT**. They can't become legal because of the existing ordinance which forbade the *City & County of Honolulu* from issuing any more licenses after December 28, 1989.

That's why I oppose the second half of this resolution **REQUESTING THE COUNTIES TO ENFORCE THE ZONING LAWS AGAINST ILLEGAL OPERATIONS OF VACATION RENTALS.** They cannot become legal.

The solution is to encourage the counties to develop standards for b&b operations such as minimum number of off-street parking places, fence setbacks, sewer line hookups, state tax clearances & certificates, etc., and then establish procedures for initial registration and renewals which would include notifying the *State Tax Department* of all licenses issued.

It is bad public policy to make criminals out of people who are providing a needed service for our visitors and who are augmenting their income by providing alternative accommodations. These are your constituents and they need your help - not your condemnation.

Therefore, I ask that you either drop the last part of this resolution or that you amend it by adding the following "urging the counties to establish policies, procedures, and regulations which will open up the licensing application process for bed & breakfast operations."

Mahalo for the opportunity to testify on this matter.

COMMITTEE ON TOURISM & CULTURE

Rep. Jerry L. Chang, Chair
Rep. Jon Riki Karamatsu, Vice Chair

Rep. Felipe P. Abinsay, Jr.	Rep. Glenn Wakai
Rep. Robert N. Herkes	Rep. Kyle T. Yamashita
Rep. Michael Y. Magaoay	Rep. Corinne W.L. Ching
Rep. Clift Tsuji	Rep. Barbara C. Marumoto

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Ezra Kanoho, Chair
Rep. Brian Schatz, Vice Chair

Rep. Lyla B. Berg, Ph.D.	Rep. Tommy Waters
Rep. Mele Carroll	Rep. Colleen Rose Meyer
Rep. Cindy Evans	Rep. Cynthia Thielen
Rep. Hermina M. Morita	

NOTICE OF HEARING

DATE: Friday, April 22, 2005
TIME: 11:00 a.m.
PLACE Conference Room 325
: State Capitol
415 South Beretania Street

SCR 42
SD1
(SSCR1679)

REQUESTING THE DEPARTMENT OF TAXATION
TO ENFORCE THE COLLECTION OF THE
TRANSIENT ACCOMMODATIONS TAX ON
UNREGISTERED VACATION RENTALS, AND
REQUESTING THE COUNTIES TO ENFORCE
THE ZONING LAWS AGAINST ILLEGAL
OPERATIONS OF VACATION RENTALS.

TAC/WLO, FIN

Aloha,

Vacation Rental units in residential areas are a giant problem and liability. Visitors staying in beachfront houses are not akamai to dangerous coastal hazards from high waves. Our unprotected { no lifeguards}, beaches make it very upappropriate to have visitors staying everywhere..Uneducated visitors combined with our sensitive enviornment make it unappropriate to turn every area of Hawaii into a de-facto visitor destination area. On

Kauai we have visitor destination areas. When tourism was first sold to Kauai's people ,hotels were not meant to spill over to our residential areas.

We have lost our community . Our culturally rich heritage is being undermined by speculative real estate that is empowered by the short time gains available to owners who turn their houses into multi-unit vacation rental units . Multi- family vacation rental units are illegal on Kauai, yet with no enforcement by our County , illegal vacation rental units have proliferated. It would be wrong for the State to require taxes on activities that are prohibited.

Haena, Wainiha are in tsunami zone. Inviting tourists to stay in these areas with no evacuation plans, provisions, knowledge of danger or plans is irresponsible. Federal flood regulations require houses to be built to flood code. It is common practice to enclose the ground floor and turn it into another vacation rental unit,violating flood insurance requirements.Will unpermitted constuction and rentals be taxed sanctioning their use and existance? Our roads, bridges flood creating other problems.We have no commercial facilities or similar amenities that hotels offer in times of emergency .

Our residential areas are being used for commercial purposes.

The North Shore development plan states that all resort development be located in Princeville. Hotels are losing business due to vacation rentals. We have allowed the visitors to displace local residences.

It is important to not de-facto legalize vacation rental units, multi and single, in residential areas,by taxing them.

I favor your legislation mandate the Counties to enact laws that protect our residential areas, and clarify the CZO ordinances.Vacation rental is a problem that has masticized, Taxing them will not help the associated problems with the proliferation of them. Clear regulations with enforcement must come first.

Mahalo, Caren Diamond

Po 536

Hanalei, Hi. 96714